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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/472,964	12/28/1999	DAVID K. GIFFORD	3CI00-3127	9422

7590 01/30/2006

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EXAMINER

HU, JINSONG

ART UNIT	PAPER NUMBER
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2154

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/472,964	Applicant(s) GIFFORD, DAVID K.	
	Examiner Jinsong Hu	Art Unit 2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-14 and 16-36 is/are pending in the application.
 4a) Of the above claim(s) 24-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10-14 and 18-23 is/are rejected.
- 7) ☒ Claim(s) 7-9 and 16-17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-5, 7-14 and 16-36 are presented for examination. Claims 1, 10, 16, 18-23 have been amended; Claims 5 and 15 have been canceled; Claims 24-36 are newly added claims.
2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Original claims 1-5, 7-14 and 16-23, drawn to a system and method for selecting a good performance server in a server replica, classified in class 709, subclass 224.
 - II. Newly added claims 24-36, drawn to a system and method for calculating a metrics value and redirect the request if failing to find a match server, classified in class 709, subclass 242.
3. The inventions are distinct, each from the other because of the following reasons: Inventions I and II are disclosed as different combinations which are not connected in design, operation or effect. These combinations are independent if it can be shown that (1) they are not disclosed as capable of use together, (2) they have different modes of operation, (3) they have different functions, or (4) they have different effects. (MPEP 806.04, MPEP 808.01).

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In the instant case, invention I is directed to a method comprises the steps of directing the client computer to one server that estimated to provide good performance. The invention II is directed to a method comprises the steps of redirecting the request to a relevant router in the network in response to fail to match a source address,

4. These inventions are distinct for the reasons given above, and the search required for each Group is different and not co-extensive for examination purpose. For example, the searches for the four inventions would not be co-extensive because these groups would require different searches on PTO's classification class and subclass as following:

(a) the Group I search (claims 1-5, 7-14 and 16-23) would require use of search **Class 709, subclass 224.**

(b) the Group II search (claims 24-36) would require use of search **Class 709, subclass 242.**

5. Since Group I claims are old claims while Group II claims are newly added claims, the Examiner elects Group I claims. The following rejection and response for the Applicant's arguments are all direct to Group I claims.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 4-5, 10, 13-14, 20 and 22 rejected under 35 U.S.C. 102(e) as being anticipated by Wallis et al. (US 6,282,569).

8. As per claims 1 and 4-5, Wallis teaches the invention as claimed including a replica router [10, Fig. 1] comprising:

at least one communications interface, a processor coupled to the at least one communications interface [col. 2, lines 49-54; col. 6, line 49 – col. 7, line 4]; and a memory coupled to the processor [col. 2, lines 59-61; 80, Fig. 1]; wherein the processor is configured to receive a network request for access from a client computer [30, Fig. 1; col. 2, lines 55-59]; calculate a performance metric value for each of at least two server replicas, the value specifying an estimated communication performance between the client computer and a server replica based upon the client computer's location in an network [col. 1, lines 14-18; i.e., the network could be a local network or WANs which depend on the practical utilization; col. 2, line 66 – col. 3, line 2; col. 3, lines 18-30; col. 7, lines 22-50] and direct the client computer to at least one server replica that is estimated to provide good performance based upon the client computer's location in the

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network based on the performance metric values of the server replicas as calculated by the replica router [col. 3, lines 2-9; col. 4, lines 4-5; col. 8, line 64 – col. 9, line 3].

9. As per claims 10, 24-25 and 13-14, since they are method claims of claims 1 and 4-5, they are rejected for the same basis as claims 1 and 4-5 above.

10. As per claims 20 and 22, since they are program and means plus function claims of claim 1, they are rejected for the same basis as claim 1 above.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 2-3, 11-12, 18-19, 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallis et al. (US 6,282,569) as applied to claims 1, 4-5, 10, 13-14, 20 and 22, in view of Brendel (US 5,774,660).

13. Brendel is a prior art reference cited by the applicant on form 1449, dated to 3/31/2000.

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14. As per claims 2-3 and 11-12, Wallis teaches the invention substantially as claimed in claim 1. Wallis also teaches maintaining a database of the server replica information [col. 5, lines 5-15]. Wallis does not specifically teach the replica router is configured to receive advertisements from the server replica. However, Brendel on the other hand teaches the replica router is configured to receive advertisements from the server replica [col. 6, lines 34-41] and determine whether any of the server replicas are located behind firewalls [col. 20, lines 22-25]. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Wallis and Brendel because doing so would increase the functionality of the system by providing commercial information to user. One of ordinary skill in the art would have been motivated to modify Wallis's system with Brendel's receiving step to attract more users.

15. As per claims 18-19, 21 and 23, Wallis teaches the step of receiving replica server information and maintaining of the server replica information in a database [col. 5, lines 5-15] and directing the user to one of the server replica based after receiving user's request [col. 3, lines 2-9; col. 4, lines 4-5; col. 8, line 64 – col. 9, line 3].

16. Wallis does not specifically teach the replica router is configured to receive advertisements from the server replica. However, Brendel on the other hand teaches the replica router is configured to receive advertisements from the server replica [col. 6, lines 34-41] and determine whether any of the server replicas are located behind

firewalls [col. 20, lines 22-25]. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Wallis and Brendel because doing so would increase the functionality of the system by providing commercial information to user. One of ordinary skill in the art would have been motivated to modify Wallis's system with Brendel's receiving step to attract more users.

Allowable Subject Matter

17. Claims 7-9 and 16-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

18. Applicant's arguments filed for claims 1-5, 7-14 and 16-36 have been fully considered but they are not deemed to be persuasive.

19. In the remarks, applicant argued in substance that (1) Wallis does not teach the step of calculating a performance metric value for each of at least two server replicas, the value specifying an estimated communication performance between the client computer and a server replica based upon the client computer's location in a network, and direct the client computer to at least one server replica that is estimated to provide good performance based upon the client computer's location in the network based on the performance metric values of the server replicas as calculated by the replica router;

(2) Rejection for claims 4-9 are blank; (3) ask Examiner pointing out particular passages render in the claims 6-9 and 15-17 allowable over the cited prior art; (4) Brender does not teach the step of determining whether any of the server replicas are located behind firewalls.

20. Examiner respectfully traverses applicant's remarks:

A. As to point (1), applicant fails to consider the teaching of the Wallis' reference for obtaining the metrics values [i.e., the number of processes running, load average, etc., col. 3, lines 18-25], which specifies an estimated communication performance between the client computer and a sever replica [col. 2, line 66 – col. 3, line 3] based on the client computer's location [col. 1, lines 14-18; i.e., the network could be a local network or WANs which depend on the practical utilization], and direct the client computer to at least one server replica that is estimated to provide good performance based upon the client computer's location in the network based on the performance metric values of the server replicas as calculated by the replica router [col. 3, lines 2-9; col. 4, lines 4-5; col. 8, line 64 – col. 9, line 3]. Thus, Wallis teaches the limitations in claim 1.

B. As to point (2), Examiner rejects claims 4-5 for the same reason as claim 1 col. 1, lines 14-18; i.e., the network could be a local network or WANs which depend on the practical utilization; col. 2, line 66 – col. 3, line 2; col. 3, lines 18-30; col. 7, lines 22-50]. There is no art rejection for claims 7-9, they are rejected under 35 U.S.C. 112 second paragraph in the previous office action.

C. As to point (3), the limitation of "the processor is further configured to direct the client computer to a server replica that is estimated to provide good performance based upon the client computer's location in the a network by directing the client computer to a replica router lower in a replica router hierarchy" is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

D. As to point (4), applicant fails to consider the teaching of the Brender' reference for processing client requests, and connecting the web site though both private and public network, which the web site could behind a firewall [col. 20, lines 17-25], i.e., before connecting to a web site, the system should determine where the web site is, either inside a public network or inside a private network with a fire wall. Thus, Brender teaches the limitation claimed in claim 12.

Accordingly, Wallis and Brender are still relevant prior art references.

21. Accordingly, THIS ACTION IS MADE FINAL. See MPEP §706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

22. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

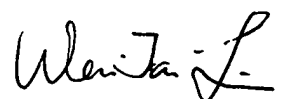
23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jinsong Hu whose telephone number is (571) 272-3965. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A. Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jinsong Hu

January 20, 2006


1/23/06